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FEDERAL COMMUNICATIONS COMMISSION  
WASHINGTON, D.C. 20554

Before the  
**FEDERAL COMMUNICATIONS COMMISSION**  
Washington, D.C. 20554

In the Matter of	)	
	)	
Federal-State Joint Board on	)	CC Docket No. 96-45
Universal Service	)	

**COMMENTS OF THE  
PERSONAL COMMUNICATIONS INDUSTRY ASSOCIATION  
ON THE JOINT BOARD'S *SECOND RECOMMENDED DECISION***

The Personal Communications Industry Association ("PCIA"),<sup>1</sup> by its attorneys, hereby submits comments on the *Second Recommended Decision* issued by the Federal-State Joint Board on universal service in the above-captioned docket.<sup>2</sup> PCIA's opening comments focus on the issues raised in the *Second Recommended Decision* relating to the recovery of universal service contributions from consumers.

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<sup>1</sup> PCIA is an international trade association established to represent the interests of both the commercial and private mobile radio service communications industries and the fixed broadband wireless industry. PCIA's Federation of Councils includes: the Paging and Messaging Alliance, the PCS Alliance, the Site Owners and Managers Association, the Association of Wireless Communications Engineers and Technicians, the Private Systems Users Alliance, the Mobile Wireless Communications Alliance, and the Wireless Broadband Alliance. As the FCC-appointed frequency coordinator for the 450-512 MHz bands in the Business Radio Service, the 800 MHz and 900 MHz Business Pools, the 800 MHz General Category frequencies for Business Eligibles and conventional SMR systems, and the 929 MHz paging frequencies, PCIA represents and serves the interests of tens of thousands of FCC licensees.

<sup>2</sup> *Federal-State Joint Board on Universal Service*, Second Recommended Decision, CC Docket No. 96-45, FCC 98J-7 (rel. Nov. 25, 1998). See also FCC Public Notice, *Common Carrier Bureau Seeks Comment on Universal Service Joint Board's Second Recommended Decision*, CC Docket No. 96-45, DA 98-2410 (Nov. 25, 1998).

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PCIA notes, as did the Joint Board, that the issues discussed in Section X of the *Second Recommended Decision* concerning the amount and description of universal service surcharges in end user bills are simultaneously being addressed by the Commission in its ongoing *Truth-in-Billing* proceeding, CC Docket No. 98-170.<sup>3</sup> In that proceeding, the Commission has received comment from numerous parties, including PCIA, on issues relating to the collection of universal service contributions from end users. Clearly, the Commission should consolidate its review of and action on these issues, most appropriately in the *Truth-in-Billing* proceeding. Should the Commission proceed with separate consideration of these same issues in this docket, however, PCIA requests that its submissions in the *Truth-in-Billing* docket be incorporated into the record in this proceeding.<sup>4</sup>

In addition, PCIA would like to add the following comments relating to specific proposals contained in the *Second Recommended Decision*.

**I. The Commission Should Not Issue Rules That Mandate the Content of Telephone Bills.**

The Joint Board urged the Commission to consider the development of rules, applicable to all telecommunications carriers, that would regulate the language used in end users' bills to describe the collection of costs associated with a carrier's universal service contributions.<sup>5</sup> For

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<sup>3</sup> *Truth-in-Billing and Billing Format* (Notice of Proposed Rulemaking), CC Docket No. 98-170 (rel. Sept. 17, 1998) ("*Truth-in-Billing Notice*").

<sup>4</sup> See Comments of PCIA, Docket No. 98-170, filed Nov. 13, 1998 ("*Truth-in-Billing Comments*"); Reply Comments of PCIA, Docket No. 98-170, filed Dec. 16, 1998 ("*Truth-in-Billing Reply Comments*"). In particular, see *Truth-in-Billing Comments* at 4 and 13-18, and *Truth-in-Billing Reply Comments* at 2-3 and 15-17.

<sup>5</sup> See *Second Recommended Decision* at ¶¶ 70-73.

the same reasons expressed in its *Truth-in-Billing* Comments,<sup>6</sup> PCIA submits that strict rules governing the content of end user bills are unnecessary and, moreover, impermissible.

PCIA would not object to the development of “safe harbor” language or “standard nomenclature,” as the Commission has proposed in both proceedings.<sup>7</sup> The Commission should not, however, mandate the inclusion or exclusion of particular words or descriptions contained in customer invoices. Supreme Court precedent makes clear that any content regulation of commercial speech must be narrowly tailored so as to prohibit only untruthful or misleading statements.<sup>8</sup> Indeed, the Joint Board goes only as far as to say that “pursuant to these Supreme Court rulings, it would not violate the First Amendment to specifically prohibit carriers from including on their bills untruthful or misleading statements regarding the nature of [universal service] line items.”<sup>9</sup> Consistent with this statement, Commissioner Furtchgott-Roth expressed concern about “regulation of billing when there is nothing factually inaccurate about the carrier’s description but it does not reflect the government’s preferred explanation.”<sup>10</sup> Accordingly, the Commission must ensure that the use of “safe harbor” language is truly voluntary, and that a carrier’s decision to use other language is not presumed impermissible.

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<sup>6</sup> See *Truth-in-Billing* Comments at 13-18.

<sup>7</sup> See *Second Recommended Decision* at ¶ 72; *Truth-in-Billing Notice* at ¶¶ 27-28.

<sup>8</sup> See *Truth-in-Billing* Comments at 14, discussing *44 Liquormart, Inc. v. Rhode Island*, 517 U.S. 484 (1996) (“bans that target truthful, nonmisleading commercial messages rarely protect consumers from [commercial] harm” and tend to “hinder consumer choice . . . [and] impede debate over central issues of public policy”). Furthermore, PCIA submits that use of the words “tax” or “mandate” in describing the universal service surcharge is not inherently untruthful or misleading and, accordingly, should not be banned outright.

<sup>9</sup> *Second Recommended Decision* at ¶ 71.

<sup>10</sup> See *id.*, Separate Statement of Commissioner Furtchgott-Roth at 15.

## **II. The Commission Should Not Dictate the Amount of the Universal Service Contribution That May Be Passed on to Each Customer.**

In the *Second Recommended Decision*, the Joint Board urged the Commission to provide “strict guidance” regarding the extent to which carriers may recover their federally-mandated contributions to the universal service support mechanisms from consumers.<sup>11</sup> In particular, the Joint Board recommended that “for carriers that choose to pass through a line item charge to consumers, the line item assessment be no greater than the carrier’s universal service assessment rate.”<sup>12</sup>

As PCIA explained in its *Truth-in-Billing* Comments, it would be extremely difficult to establish a carrier’s precise “universal service assessment rate” on a customer-by-customer basis.<sup>13</sup> Under the current collection mechanisms, the Commission requires each carrier to contribute to the universal service fund based on the carrier’s end-user telecommunications revenue from *preceding time periods*.<sup>14</sup> Accordingly, a carrier must necessarily estimate how much to collect from its customers on a going-forward basis, without knowing how many customers it will have (for per capita fees) or their level of service usage (for usage-based fees). Unless a carrier is lucky or prescient, some degree of over- or under-collection is inevitable. As such, it would be unreasonable to punish a carrier for an “over-collection.”

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<sup>11</sup> See *Second Recommended Decision* at ¶ 68.

<sup>12</sup> *Id.* at ¶ 69.

<sup>13</sup> See *Truth-in-Billing* Comments at 15-16; *Truth-in-Billing* Reply Comments at 15-16.

<sup>14</sup> See *Truth-in-Billing* Comments at 15; see also 47 C.F.R. §§ 54.709, 54.711. Specifically, a carrier’s quarterly contribution is set on a quarterly basis by applying certain contribution factors to revenue data submitted twice a year. See 47 C.F.R. § 54.711(a); *Instructions for Completing the Universal Service Worksheet*, Form 457 at 1.

Moreover, PCIA submits that “strict” regulation of wireless carriers’ universal service cost recovery is not necessary. For example, the Joint Board suggested that “some carriers may attempt to exercise market power and recover through universal service charges in a non-competitive fashion more than they are contributing to universal service.”<sup>15</sup> In the wireless industry, this concern is unfounded. As PCIA has reiterated many times before, because the wireless marketplace is highly competitive, carriers have ample market-based incentives to avoid driving up consumers’ bottom-line costs.<sup>16</sup> This reality greatly reduces the likelihood that carriers would significantly and intentionally over-estimate universal service pass-through charges. In addition, the Joint Board cites a concern that carriers are “allocating a disproportionate share of universal service costs to certain classes of customers,”<sup>17</sup> but cites no evidence that this practice is occurring in the wireless industry.

In any case, should a problem arise with a particular carrier’s practices, the Commission has available all necessary regulatory and enforcement tools to address particular instances of abuse.

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<sup>15</sup> *Second Recommended Decision* at ¶ 69.

<sup>16</sup> *See, e.g., Truth-in-Billing* Comments at 7, 16; *Truth-in-Billing* Reply Comments at 3-5.


<sup>17</sup> *Second Recommended Decision* at ¶ 69.

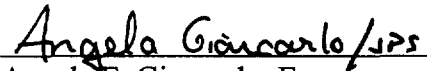
### III. CONCLUSION

For the foregoing reasons, PCIA respectfully submits that the Commission should not duplicate its efforts in the ongoing *Truth-in-Billing* proceeding and, accordingly, should consolidate consideration of the foregoing issues in that docket. Moreover, for the reasons set forth herein, the Commission should refrain from imposing strict rules governing the content of end users' bills, and should not impose caps on universal service pass-through charges on end users' bills.

Respectfully submitted,

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